

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed March 31, 2003 ("Office Action"). At the time of the Office Action, Claims 1-42 were pending in this Application. Claims 1-42 were rejected. Claims 4-9, 17, 18, 20-22, 27, 30, 31, 33-35, and 40 have been amended. Applicants respectfully submit that no new matter has been added by the amendments, as the amendments only distinctly point out elements and features already present in the Application. The amendments are made without prejudice or disclaimer. Applicants respectfully request reconsideration and favorable action in this case.

Section 112 Rejections

The Office Action rejected Claims 13, 26, 39 and 40 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. According to the Office Action, the phrase "primary position" was not clearly defined. Applicants respectfully traverse these rejections for the reasons stated below.

Applicants direct the Examiner's attention to page 13, line 30 through page 14, line 2 of the Application, which reads, "[a] primary position within the queue . . . may include a first or highest priority position in the queue . . . or set of queues from which a connection will be selected when a communication link . . . of a port is available for connection." In light of this disclosure, Applicants respectfully submit that the phrase "primary position" is clearly defined and request that the rejection of Claims 13, 26, 39, and 40 be withdrawn.

The Office Action rejected Claims 4, 5, 7-9, 17, 18, 20-22, 30, 31, and 33-35 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. According to the Office Action, the term "status" of Claims 4, 5, 7-9, 17, 18, 20-22, 30, 31, and 33-35 was not disclosed by the specification. Applicants respectfully traverse these rejections. However, Claims 4, 5, 7-9, 17, 18, 20-22, 30, 31, and 33-35 have been amended without prejudice or disclaimer, and no longer refer to a "status". Instead, Claims 4, 5, 7-9, 17, 18, 20-22, 30, 31, and 33-35 now refer to a "priority," which is disclosed in the specification. As such, Applicants submit that Claims 4, 5, 7-9, 17, 18, 20-22, 30, 31, and 33-35 are not

objectionable under 35 U.S.C. § 112, first paragraph, and request that the rejection be withdrawn.

Section 102 Rejections

The Office Action rejected Claims 1, 2, 11, 13-15, 24, 26-28, 37 and 39 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,195,414 issued to Dans ("Dans"). Applicants respectfully traverse these rejections for the reasons stated below.

In order to establish a *prima facie* case of anticipation, all the elements of the claimed invention must be found within a single prior art reference. *Dewey & Almy Chemical Co. v. Mimex*, 124 F.2d 986, 52 USPQ 138 (2d Cir. 1942). Applicants respectfully submit that each and every element of the claimed invention is not found within the *Dans* reference.

Claim 1 is directed to a method for prioritized access to a messaging system that includes receiving at an access controller for a messaging system, a request for connection by a user to the messaging system. *Dans* does not disclose, teach or suggest these limitations. For example, *Dans* does not suggest that the "main computer" receives a request for connection to a messaging system, from a user. Instead, the users of *Dans* merely call the main computer and provide a check number, in order for the main computer to verify the validity of the check. The "users" of *Dans* do not request a connection with a messaging system. Instead, the users connect with the main computer and submit a verification requests. The main computer then requests a connection with one or more "feed applications."

Claim 2 includes all of the limitations of Claim 1, and further provides that the user is immediately connected to the messaging system if the messaging system is initially available. *Dans* does not suggest that any user of the main computer is ever connected with the "feed applications" of *Dans*. Therefore, *Dans* does not disclose, teach or suggest each of the limitations of Claim 2.

Similar to Claim 1, each of Claims 14 and 27 include limitations that relate to a request for connection by a user to a messaging system. As discussed above with regard to Claim 1, *Dans* does not disclose, teach or suggest these limitations. For at least these reasons, Applicants respectfully submit that Claims 1, 14 and 27 are patentably distinguishable from *Dans*.

Similar to Claim 2, each of Claims 15 and 28 include limitations that relate to connecting the user to the messaging system if the messaging system is available. *Dans* does not disclose, teach or suggest each of these limitations. For at least these reasons, Applicants respectfully submit that Claims 2, 15 and 28 are patentably distinguishable from *Dans*.

Claims 11, 24 and 37 depend from Claims 1, 14 and 27, respectively. Therefore, Applicants respectfully submit that Claims 11, 24 and 37 are patentably distinguishable from *Dans* for example, for the same reasons discussed above with regard to their respective base Claims.

Claims 13, 26 and 39 each include limitations that relate to the ability to connect the user to the messaging system. As discussed above with respect to Claim 2, *Dans* does not disclose, teach or suggest that the user is or can be connected to a messaging system. Therefore, Applicants respectfully request allowance of Claims 13, 26 and 39.

Section 103 Rejections

The Office Action rejected Claims 3, 16 and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Dans* as applied to Claim 1 above, and in view of U.S. Patent No. 6,459,681 issued to Oliva. ("Oliva"). Applicants respectfully traverse these rejections for the reasons stated below.

Claim 3 is directed to a method for prioritized access to a messaging system that includes receiving a request for connection by a user to a messaging system. The request is queued if the messaging system is not available. More particularly, and in accordance with Claim 3, a class of service of the connection is determined, and the request is queued based upon the class of service. Neither *Dans* nor *Oliva*, either alone or in combination, disclose, teach or suggest each of these limitations.

The Office Action contends that "it would have been obvious . . . to modify *Dans* to have the 'determining a class of service . . . based on the CoS.'" Applicants disagree with this contention and also point out that it misstates the limitations of Claim 3. Claim 3 does not require determining a class of service based upon a class of service. Instead, Claim 3 refers to "queueing the request based on the CoS."

The Office Action contends further that *Oliva* teaches "queueing based on CoS" at column 8 line 25. Applicants respectfully disagree. *Oliva* teaches round robin queueing with

class of service separation. However, this does not disclose, teach or suggest that the queueing is based upon the class of service, as required by Claim 3. For at least these reasons, Applicants respectfully submit that Claim 3 is patentably distinguishable from *Dans* in view of *Oliva*.

Similar to Claim 3, Claims 16 and 29 each include limitations that relate to queueing based upon CoS. As stated above, neither *Dans* nor *Oliva* disclose, teach or suggest each of these limitations, and Applicants respectfully request allowance of Claims 3, 16 and 29.

The Office Action rejected Claims 4, 17 and 30 under 35 U.S.C. § 103(a) as being unpatentable over *Dans* and *Oliva* as applied to Claim 3 above, and in view of U.S. Patent No. 6,404,870 issued to Kia et al. ("Kia"). Applicants respectfully traverse these rejections for the reasons stated below.

Claims 4, 17 and 30 depend from Claims 3, 16 and 29, respectively. Therefore, Applicants respectfully submit that Claims 4, 17 and 30 are patentably distinguishable from the references cited by the Office Action for example, for the same reasons discussed above with regard to Claims 3, 16 and 29. Furthermore, each of Claims 4, 17 and 30 require that the class of service that is determined includes a priority associated with the user. Neither *Dans*, *Oliva*, nor *Kia*, either alone or in combination, disclose, teach, or suggest each of these limitations. Accordingly, Applicants respectfully request full allowance of Claims 4, 17 and 30.

The Office Action rejected Claims 5, 6, 18, 19, 31 and 32 under 35 U.S.C. § 103(a) as being unpatentable over *Dans*, *Oliva* and *Kia* as applied to Claim 4 above, and in view of U.S. Patent No. 5,920,846 issued to Storch et al. ("Storch"). Applicants respectfully traverse these rejections for the reasons stated below.

Claims 5, 18 and 31 depend from Claims 4, 17 and 30, respectively. Therefore, Applicants respectfully contend that Claims 5, 18 and 31 are patentably distinguishable from the references cited by the Office Action for example, for the same reasons above with respect to Claims 4, 17 and 30.

Claim 6 is directed to a method for prioritized access to a messaging system that includes "determining a telephone number of [a] user, at [an] access controller." Claim 19 is directed to an access controller for a messaging system that includes "means for determining a telephone number of the user." Claim 32 is directed to a system for prioritized access to a

messaging system that includes logic that is "operable to determine a telephone number of [a] user." The Office Action refers to *Storch* as disclosing these limitations. However, *Storch* is directed to a method of operating a general purpose digital computer that includes the step "computer data processing customer information into computer memory including . . . telephone number." In other words, in accordance with the method of *Storch*, a telephone number of a customer is input into a computer memory. Neither this aspect, nor any other portion of *Storch* discloses, teaches or suggests the ability to determine a telephone number of the user. For at least these reasons, Applicants respectfully contend that Claims 6, 19 and 32 are patentably distinguishable from the references cited by the Office Action.

The Office Action rejected Claims 7, 20 and 33 under 35 U.S.C. § 103(a) as being unpatentable over *Dans* and *Oliva* as applied to Claim 3 above, and in view of U.S. Patent No. 6,493,445 issued to Garland et al. ("Garland"). Applicants respectfully traverse these rejections for the reasons stated below.

Claims 7, 20 and 33 depend from Claims 3, 16 and 29, respectively. Therefore, Applicants respectfully contend that Claims 7, 20, and 33 are patentably distinguishable from the references cited by the Office Action for example, for the same reasons discussed above with respect to Claims 3, 16 and 29. Furthermore, Claim 7 is directed to a method for prioritized access to a messaging system that includes receiving a request for connection, and determining a class of service that includes a priority associated with a called party, for the connection. None of the references cited by the Office Action disclose, teach, or suggest each of these limitations. Similarly, Claim 20 is directed to an access controller for a messaging system that includes means for determining a class of service that includes a priority associated with a called party, and Claim 33 is directed to a system for prioritized access to a messaging system that includes logic that is operable to determine a class of service including a priority associated with a called party, for the connection. For the same reasons discussed above with regard to Claim 7, Applicants respectfully contend that Claims 20 and 33 are patentably distinguishable from the references cited by the Office Action.

The Examiner rejected Claims 8, 21, and 34 under 35 U.S.C. § 103(a) as being unpatentable over *Dans*, *Oliva*, and *Garland* as applied to Claim 7 above, and in view of *Storch*. Applicants respectfully traverse these rejections for the reasons stated below.

Claim 8 is directed to a method for prioritized access to a messaging system that includes determining a class of service for a connection, wherein the class of service includes a priority that is established according to a telephone number of the called party. The Office Action refers to *Storch* on column 56, line 62- column 57, line 7 as disclosing that a status code is established according to service order number. However, this portion of *Storch* has no relation whatsoever to Claims 8, 21 and 34. Neither *Storch*, nor any other reference cited by the Office Action, either alone or in combination, discloses, teaches or suggests that a priority associated with a called party is established according to a telephone number of the called party, as required by Claim 8. Applicants respectfully submit that the Examiner has misinterpreted the *Storch* reference as it relates to Claims 8, 21 and 34. Applicants respectfully contend that Claims 8, 21 and 34 are patentably distinguishable from *Storch*, and all references cited by the Examiner. Full allowance of Claims 8 , 21 and 34 is respectfully requested.

The Office Action rejected Claims 9, 10, 22, 23, 35 and 36 under 35 U.S.C. § 103(a) as being unpatentable over *Dans* and *Oliva* as applied to Claim 3 above, and in view of U.S. Patent No. 6,219,415 issued to Deutsch et al. ("Deutsch"). Applicants respectfully traverse these rejections for the reasons stated below.

Claim 9 is directed to a method for prioritized access to a messaging system that includes determining a class of service for a connection, wherein the class of service includes a priority associated with the type of the request for connection. The Office Action refers to *Deutsch* as disclosing "the status associated with the type of connection includes 'hold' and 'camp-on'." Assuming arguendo that this were true, this merely establishes that *Deutsch* teaches that the type of connection can have a particular status. However, neither *Deutsch*, nor any of the other references cited by the Examiner, either alone or in combination, disclose, teach, or suggest determining a class of service for a connection that includes a priority associated with the type of the request for connection.

The Office Action uses the same disclosure of *Deutsch* to reject Claims 22 and 35. For similar reasons to those discussed above with regard to Claim 9, Applicants respectfully contend that neither *Deutsch*, nor any other reference cited by the Examiner, either alone or in combination, disclose, teach or suggest each of the limitations of Claims 9, 22 and 35. Claims 10, 23 and 36 depend from Claims 9, 22 and 35, respectively. Therefore, Applicants

respectfully contend that Claims 10, 23 and 36 are patentably distinguishable from the references cited by the Examiner for example, for the same reasons discussed above with respect to Claims 9, 22 and 35, respectively.

The Office Action rejected Claims 12, 25 and 38 under 35 U.S.C. § 103(a) as being unpatentable over *Dans* as applied to Claim 1 above, and in view of U.S. Patent No. 6,512,825 issued to Lindholm et al. ("Lindholm"). Applicants respectfully traverse these rejections for the reasons stated below.

Claims 12, 25 and 38 depend from Claims 1, 14 and 27, respectively. Therefore, Applicants respectfully contend that Claims 12, 25 and 38 are patentably distinguishable from the references cited by the Examiner for example, for the same reasons discussed above with regard to their base claims.

The Office Action rejected Claims 40 under 35 U.S.C. § 103(a) as being unpatentable over *Dans*, and in view of U.S. Patent No. 6,529,500 issued to Pandharipande. ("Pandharipande"). Applicants respectfully traverse these rejections for the reasons stated below.

Contrary to the contention of the Office Action, the cited references fail to teach, suggest, or disclose each and every element of Claim 40. As discussed above in regard to Claim 1, *Dans* fails to teach, suggest, or disclose "receiving at an access controller a request for connection by a user to the messaging system; determining at the access controller whether the messaging system is available; and queuing the request at the access controller if the messaging system is not available." Similarly, *Pandharipande* also fails to teach, suggest or disclose such functionality.

Furthermore, although *Pandharipande* discloses that a password is often required to access a voicemail account (See *Pandharipande*, col. 1, lines 16-19), neither *Dans* nor *Pandharipande* teach, suggest, or disclose "authenticating the user for access to the messaging system" while the request is queued. The mere fact that *Pandharipande* discloses that voicemail access often requires a password does not teach, suggest or disclose authenticating the user while the request for connection is queued. For at least these reasons, Applicants respectfully submit that the rejection of Claim 40 is improper and request that it be withdrawn.

The Office Action rejected Claims 41 under 35 U.S.C. § 103(a) as being unpatentable over *Dans* and *Pandharipande* as stated in claim 40 above and in view of U.S. Patent No. 6,459,681 issued to Oliva. ("Oliva"). Applicants respectfully traverse these rejections for the reasons stated below. The Office Action rejected Claims 42 under 35 U.S.C. § 103(a) as being unpatentable over *Dans* and *Pandharipande* as stated in Claim 40 above, and in view of U.S. Patent No. 6,456,699 issued to Burg et al. ("Burg"). Applicants respectfully traverse these rejections for the reasons stated below.

Claims 41 and 42 each depend from independent Claim 40. Therefore, Applicants respectfully contend that Claims 41 and 42 are patentably distinguishable from the references cited by the Office Action for example, for the same reasons discussed above with regard to Claim 40.

The Office Action cites many combinations of references to reject claims of the present invention. Applicants note that the Office Action fails to offer any evidence in such references that provide any suggestion or motivation to make the proposed combinations. Moreover, the Office Action fails to show that the proposed combinations could have been based on the knowledge available to one having ordinary skill in the art. The Office Action also fails to identify any evidence relating to an expectation of success in making any of the proffered combinations, much less a reasonable expectation of success as is required to support a proper §103 rejection. (See M.P.E.P. §2143.) Therefore, Applicants respectfully submit that the combinations proposed by the Office Action are improper, and cannot support any rejection under 35 U.S.C. §103.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending Claims. If the Examiner feels that a telephone conference or an interview would advance prosecution of this Application in any manner, the undersigned attorney for Applicants stands ready to conduct such a conference at the convenience of the Examiner.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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